

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

LESLEY EUGENE WARREN, )

*Petitioner-Appellant,* )

v. )

Case No. 17-4

MARVIN POLK, )

*Respondent-Appellee.* )

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**MOTION TO RELIEVE COUNSEL AND MOTION TO APPOINT  
COUNSEL**

This is an appeal from the denial of a 28 U.S.C. § 2254 capital habeas petition. The appellant, Lesley Eugene Warren, moves for an order (1) relieving Frank Goldsmith of his appointment as second-chair counsel; (2) appointing Jonathan Broun as second-chair counsel; and (3) appointing Elizabeth Simpson as associate counsel, for the following reasons:

1. On June 6, 2017, appellant noticed his appeal from the U.S. District Court for the Middle District of North Carolina on denial of his § 2254 capital habeas petition.
2. On June 8, 2017, this action was docketed in the Fourth Circuit as case number 17-4.

3. At the district court level, Appellant was represented by two attorneys, Kristin Parks and Frank Goldsmith.
4. While Kristin Parks will stay on as first-chair appointed counsel for this appeal, Frank Goldsmith wishes to be relieved from duties related to this case due to his retirement.
5. A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to appointment of one or more qualified attorneys. 18 U.S.C. § 3599(a)(2). Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two attorneys. 7 Guide to Judiciary Policy § 620.10.20.
6. Appellant seeks appointment of second-chair counsel and associate counsel in his appeal in order to benefit his case.
7. In appointing post-conviction counsel in a case where a defendant is sentenced to death, courts should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications identified in 7 Guide to Judiciary Policy §§ 620.30 and 620.60.20.
8. These general qualifications include the minimum standards set forth 18 U.S.C. § 3599(b)-(d), 18 U.S.C. § 3005; proposed counsel's commitment to

the defense of capital cases, and proposed counsel's distinguished prior experience in death penalty trials, appeals, or post-conviction review that will ensure high quality representation.

9. Attorney Jonathan Broun meets the qualifications to be appointed as second-chair counsel. He graduated from the University of North Carolina School of Law in 1991, receiving the Book Awards for highest grades in his Criminal Law and Evidence courses. He has been admitted to the North Carolina Bar for 26 years, and has been admitted to the U.S. Court of Appeals for the Fourth Circuit for 17 years. He maintains a physical office in Raleigh, North Carolina, which is within the Circuit. He has been admitted to the capital trial, post-conviction, and appellate rosters in North Carolina since around 2002. During his career, Attorney Broun has defended approximately fifty defendants in capital cases at the trial, direct appeal, post-conviction, federal habeas, and clemency stages. He has tried 27 state criminal trials, and five capital trials. He has filed two appellate briefs in federal court in criminal or habeas cases, and has argued one appeal in federal court. He has filed six appellate briefs in state court on criminal or post-conviction cases, and has argued four appeals in state court. In 2011, he received the J. Kirk Osborn Award from the Fair Trial Initiative, an award that is granted annually to a capital trial attorney for direct representation of

clients and mentoring of young attorneys doing capital work. Attorney Broun has made an application for membership on the Fourth Circuit Capital Appellate Panel.

10. In order to assist first-chair appointed counsel, Kristin Parks, and proposed second-chair counsel, Jonathan Broun, Appellant additionally requests the appointment of Elizabeth Simpson as associate counsel. Attorney Simpson is well-qualified to assist the experienced lead counsel in this case. She graduated from Yale Law School in 2009, winning the C. LaRue Munson Prize for excellence in investigation, preparation, and presentation of legal cases under a law school clinical program. From 2009-2010, she served as law clerk for the Honorable Denny Chin on the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit. In 2010, she was awarded the Arthur Liman Public Interest Fellowship, a competitive postgraduate public interest fellowship, to engage in immigration and criminal justice work in North Carolina. She has worked at North Carolina Prisoner Legal Services for nearly five years as a civil rights litigator, enforcing the constitutional rights of incarcerated persons through Section 1983 suits in the Fourth Circuit and North Carolina's federal district courts, arguing one appeal in the Fourth Circuit, briefing dozens of summary judgment motions in the district courts, and serving as counsel in

three federal trials. She has also worked as an adjunct clinical professor at the University of North Carolina School of Law. She has been admitted to the North Carolina Bar for seven years, been admitted to the Fourth Circuit for four years, and maintains an office in Raleigh, North Carolina, which is within the Fourth Circuit.

11. Appellant's case includes a voluminous record of proceedings dating back to 1990 in state and federal court. Proceedings in the federal district court included arguments for eighteen grounds for relief, culminating in an 80-page order. Due to the complex nature of the case, appointment of two additional attorneys will benefit Appellant substantially, and the use of an associate counsel in addition to first- and second-chair counsel will conserve judicial resources due to the lower rate of reimbursement for associate counsel, while ensuring a high level of representation. Attorney Parks is familiar with the work of proposed second-chair and associate counsel, and is comfortable working with their assistance.

12. Counsel for Appellee, Jess Mekeel, of the North Carolina Department of Justice, has been informed of Appellant's intention to file this motion, and does not oppose the motion.

WHEREFORE, the appellant respectfully requests that this Court enter an order (1) relieving Frank Goldsmith of his appointment as second-chair counsel;

(2) appointing Jonathan Broun as second-chair counsel; and (3) appointing Elizabeth Simpson as associate counsel.

Respectfully submitted this 29<sup>th</sup> day of June, 2017

/s/ Kristin D. Parks  
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*Counsel for Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that foregoing has been duly served electronically upon Mr. Jess Mekeel, Assistant Deputy Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina, 27602-0629.

This the 29<sup>th</sup> day of June 2017.

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Kristin D. Parks

Counsel for Mr. Warren